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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,323	02/19/2002	Paul Thomas Schultz	09710-1096	2859

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EXAMINER

AZAD, ABUL K

ART UNIT

PAPER NUMBER

2654

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/076,323	SCHULTZ, PAUL THOMAS
	<b>Examiner</b>	<b>Art Unit</b>
	ABUL K. AZAD	2654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 August 2004.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 4-6, 13-15, 18 and 21-24 is/are allowed.
- 6) Claim(s) 1-3, 7-12, 16, 17, 19 and 20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. This action is in response to the communication filed on August 13, 2004.
2. Claims 1-24 are pending in this action. Claims 1, 4, 9, 13, 19 and 21 have been amended. Claim 24 has been newly added.
3. The applicant's arguments with respect to claims 1, 2, 9, 10 and 19 have been fully considered but they are not deemed to be persuasive. For examiner's response to the applicant's arguments or comments, see the detailed discussion in the Response to the Arguments section.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 9 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Jonsson et al. (US 6,208,959).

As per claim 1, Jonsson teaches, "a method of interfacing with a human user", comprising:

“providing information in groups” (col. 9, lines 9-43, “command” as “information in groups”); and

“sending to the human user at least one group of the information as a voice transmission with a tonality unique to the at least one group that distinguishes the at least one group from others of the groups” (col. 9, lines 44-56, corresponding predefined speech symbols has a tonality).

As per claim 9, it is interpreted and thus rejected for the same reasons set forth in the rejection of claims 1.

As per claim 2, Jonsson teaches, “providing a tonality fundamental pitch that is unique for each of the groups” (col. 9, lines 44-67, each formant frequency has fundamental pitch).

As per claim 10, Jonsson teaches, “means for responding to and recognizing user commands for navigation of the groups of the information and said means for receiving and recognizing together with said means sending form a two way user interface” (col. 10, lines 4-34)

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 3, 7, 8, 11, 12, 16, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonsson et al. (US 6,208,959) in view of Ohta (US 5,703,311).

As per claim 3, Jonsson teaches, "preceding successive groups of the information respectively by a tone unique to each group" (col. 9, lines 9-65),

Jonsson does not explicitly teach, "with the tones of the groups being a musical progression of tones of a musical key and starting the musical progression with the tonic tone of the musical key". However, Ohta teaches, "with the tones of the groups being a musical progression of tones of a musical key and starting the musical progression with the tonic tone of the musical key" (col. 4, lines 10-52, formant tone generator).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use an instrument as teaches by Ohta to map symbol into a formant frequency in the invention of Jonsson because Ohta teaches voice are synthesis without requiring high performance of calculations while tone-color editing performed to smoothly change voices to music tones (col. 2, lines 44-54).

As per claim 7, Jonsson teaches, "receiving and recognizing user voice commands for navigation of the groups of the information" (col. 9, lines 20-23).

As per claim 8, Jonsson teaches, "receiving and recognizing user tone commands for navigation of the groups of the information" (col. 9, lines 20-23).

As per claims 11, 12, 16, 17, 19 and 20 they are interpreted and thus rejected for the same reasons set for in the rejection of claims 3, 7 and 8.

***Allowable Subject Matter***

8. Claims 4-6, 13-15, 18, 21-24 are allowed over the prior art of record.

***Response to Arguments***

9. The applicant argues at the remarks section page 9 of his response as "By contrast, Jonsson et al. bears no relation to "interfacing with a human user", but instead pertains to techniques for adapting non-speech data for transmission via a coded voice channel in an air interface in a mobile telecommunications system (e.g., a GSM-system), so that the air interface will accommodate the in-band signaling with respect to the land-based communications systems. (col. 2: 56-61) As anticipation under 35 U.S.C. 102 requires that each and every element of the claim be disclosed in a prior art reference, based on the foregoing, it is clear that Jonsson et al. fails to anticipate amended independent claims 1, 9 and 19. In part because of their dependency from independent claims 1 and 9, claims 2 and 10 are also patentably distinguishable over Jonsson et al."

The examiner disagrees with the applicant's assertion because applicant's indicated portion of Jonsson's reference (col. 2, lines 56-61) teaches a mobile telecommunication system (e.g. a GSM system). A mobile telephone inherently interfaces with a human user. It is so recognized by a person of ordinary skill that mobile telephone is interfacing with the human user and air channel. A mobile telephone is necessarily used or interfaced by a human user.

Following case laws are cited for the applicant's convenience: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in "at least one of two-digit, three-digit, or four-digit" representations, was held anticipated by a system that offsets year dates in only two-digit formats). "To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991) (The court went on to explain that "this modest flexibility in the rule that anticipation' requires that every element of the claims appear in a single reference accommodates situations in which the common knowledge of technologists is not recorded in the reference; that is, where technological facts are known to those in the field of the invention, albeit not known to judges." 948 F.2d at 1268, 20 USPQ at 1749-50.).

10. The applicant further argues at page 10 and 11 of the response as "further, Applicant submits that Ohta is non-analogous art, in contravention or MPEP j2141.01(a). Pursuant to MPEP 2141.01(a), the Examiner must determine what is "analogous prior art" for the purpose of analyzing obviousness. In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQZd 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQZd 1058, 1060-61 (Fed. Cir. 1992),\* and *Wang Laboratories Inc. v Toshiba Corp.*, 993 F.2d 858, 26 USPQZd 1767 (Fed. Cir. 1993). In the case at hand, one skilled in the art would not consult Ohta to address the problem of determining where the user is in a dialog (navigation, including browsing). (see e.g., Specification, paragraph 11, page 2). Ohta (col. 1: 9-11) relates to electronic musical apparatuses which use formant sound synthesis to synthesize sounds or voices for the music. Synthesizing apparatus which Ohta recognizes a need to provide a singing voice is capable of singing a song in a natural manner based on performance data originally created for performance of a musical instrument (col. 1: 55-58)".

The examiner disagrees with the applicant's assertion because here Jonsson is the primary reference and Ohta is used here to solve a particular problem, where Jonsson does not explicitly teach, information is musical progression of tones of a musical key. Jonsson teaches a formant generator but does not explicitly teach formant

tone can be generated by musical progression of tones of a musical key, this particular problem is solved by Ohta's teaching at column 4, lines 10-53. Therefore, Otha is an analogous prior art.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Contact Information***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Abul K. Azad** whose telephone number is **(703) 305-3838**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Richemond Dorvil**, can be reached at **(703) 305-9645**.

Any response to this action should be mailed to:

**Commissioner for Patents**

**P.O. Box 1450**

**Alexandria, VA 22313-1450**

Or faxed to:

**(703) 872-9314**

(For informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to 2121 Crystal Drive, Arlington,  
VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application should  
be directed to the Technology Center's Customer Service Office at telephone number  
**(703) 306-0377.**

Abul K. Azad



November 23, 2004